AHAR information is not subject to public disclosure, the Secretary shall notify the GSE that the request has been granted. In such cases, the Secretary shall issue either a temporary order, a final order, or a regulation providing that the mortgage data or information is not subject to public disclosure. Such a temporary order, final order, or regulation shall:

(i) Document the reasons for the determination; and

(ii) Be provided to the GSE, made available to members of the public, and published in the FEDERAL REGISTER, except that any portions of such order or regulation that would reveal the proprietary information shall be withheld from public disclosure. Publications of temporary orders shall invite public comments when feasible.

(2) Where the Secretary determines that such mortgage data or information is proprietary, the Secretary shall not make it publicly available, except as otherwise provided in accordance with this subpart.

(f) *Determination not to accord proprietary treatment to mortgage data and AHAR information or to seek further information.* When the Secretary determines that such mortgage data or AHAR information designated as proprietary by a GSE may not be proprietary, that the request may be granted only in part, or that questions exist concerning the request, the following procedure shall apply:

(1) The Secretary shall provide the GSE with an opportunity for a meeting with HUD to discuss the matter, for the purpose of gaining additional information concerning the request.

(2) Following the meeting, based on the Secretary's review of the mortgage data or AHAR information that is the subject of a request and the GSE's objections, if any, to disclosure of such mortgage data or AHAR information, the Secretary shall make a determination:

(i) If the Secretary determines to withhold from the public-use database as proprietary the mortgage data or AHAR information that is the subject of a request, the procedures in paragraph (e) of this section shall apply; or

(ii) If the Secretary determines that any mortgage data or AHAR informa-tion that is the subject of a request is not proprietary, the Secretary shall provide notice in writing to the GSE of the reasons for this determination, and such notice shall provide that the Secretary shall not release the mortgage data or AHAR information to the public for 10 working days.

§ 81.75 Proprietary information withheld by order or regulation.

Following a determination by the Secretary that mortgage data or AHAR information is proprietary information under FHEFSSA, the Secretary shall expeditiously issue a temporary order, final order, or regulation withholding the mortgage data or AHAR information from the public-use database and from public disclosure by HUD in accordance with 12 U.S.C. 4546. The Secretary may, from time-to-time, by regulation or order, issue a list entitled ''GSE Mortgage Data and AHAR Information: Proprietary Information/Public-Use Data'' providing that certain information shall be treated as proprietary information. The Secretary may modify the list by regulation or order.

§ 81.76 FOIA requests and protection of GSE information.

(a) *General.* HUD shall process FOIA requests for information submitted to the Secretary by the GSEs in accordance with:

(1) HUD's FOIA and Privacy Act regulations, 24 CFR parts 15 and 16;

(2) 12 U.S.C. 4525, 4543, and 4546 and this subpart; and

(3) Other applicable statutes, regulations, and guidelines, including the Trade Secrets Act, 18 U.S.C. 1905, and Executive Order 12600. In responding to requests for data or information submitted by or relating to the GSEs, the Secretary may invoke provisions of these authorities to protect data or information from disclosure.

(b) *Protection of confidential business information other than mortgage data and AHAR information.* When a GSE seeks to protect from disclosure confidential business information, the GSE may seek protection of such confidential business information pursuant to the provisions of HUD's FOIA regulations at 24 CFR part 15, without regard to

whether or not it is mortgage data or AHAR information.

(c) *Processing of FOIA requests*—(1) *FOIA Exemption (b)(4).* HUD will process FOIA requests for confidential business information of the GSEs to which FOIA exemption 4 may apply in accordance with 24 CFR part 15, and the predisclosure notification procedures of Executive Order 12,600.

(2) *FOIA Exemption (b)(8).* Under section 1319F of FHEFSSA, the Secretary may invoke FOIA exemption (b)(8) to withhold from the public any GSE data or information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of HUD. HUD may make data or information available for the confidential use of other government agencies in their official duties or functions, but all data or information remains the property of HUD and any unauthorized use or disclosure of such data or information may be subject to the penalties of 18 U.S.C. 641.

(3) *Other FOIA exemptions.* Under 24 CFR part 15, the Secretary may invoke other exemptions including, without limitation, exemption (b)(6) (5 U.S.C. 552(b)(6)), to protect data and information that would constitute a clearly unwarranted invasion of personal privacy.

(d) *Protection of information by HUD officers and employees.* The Secretary will institute all reasonable safeguards to protect data or information submitted by or relating to either GSE, including, but not limited to, advising all HUD officers and employees having access to data or information submitted by or relating to either GSE of the legal restrictions against unauthorized disclosure of such data or information under the executive branch-wide standards of ethical conduct, 5 CFR part 2635, and the Trade Secrets Act, 18 U.S.C. 1905. Officers and employees shall be advised of the penalties for unauthorized disclosure, ranging from disciplinary action under 5 CFR part 2635 to criminal prosecution.

(e) *Protection of information by contractors.* (1) In contracts and agreements entered into by HUD where contractors have access to data or information submitted by or relating to ei-

ther GSE, HUD shall include detailed provisions specifying that:

(i) Neither the contractor nor any of its officers, employees, agents, or subcontractors may release data submitted by or relating to either GSE without HUD's authorization; and

(ii) Unauthorized disclosure may be a basis for:

(A) Terminating the contract for default;

(B) Suspending or debarring the contractor; and

(C) Criminal prosecution of the contractor, its officers, employees, agents, or subcontractors under the Federal Criminal Code.

(2) Contract provisions shall require safeguards against unauthorized disclosure, including training of contractor and subcontractor agents and employees, and provide that the contractor will indemnify and hold HUD harmless against unauthorized disclosure of data or information belonging to the GSEs or HUD.

[60 FR 61888, Dec. 1, 1995, as amended at 65 FR 65089, Oct. 31, 2000]

§ 81.77 Requests for GSE information on behalf of Congress, the Comptroller General, a subpoena, or other legal process.

(a) *General.* With respect to information submitted by or relating to the GSEs, nothing in this subpart F may be construed to grant authority to the Secretary under FHEFSSA to withhold any information from or to prohibit the disclosure of any information to the following persons or entities:

(1) Either House of Congress or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(2) The Comptroller General, or any of the Comptroller General's authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(3) A court of competent jurisdiction pursuant to a subpoena; or

(4) As otherwise compelled by law.

(b) *Notice of proprietary or confidential nature of GSE information.* (1) In releasing data or information in response to a request as set out in paragraph (a) of